

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:02

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October 1, 2009

## LEGEND

Company =

Family Group =

Retirement Plan =

State X =

Business A =

Date 1 =

Date 2 =

Date 3 =

Fiscal Year A =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

Dear :

This letter responds to your May 26, 2009 request for rulings on certain federal income tax consequences of a partially completed transaction. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Company is a closely held State X corporation engaged in Business A. Company has two classes of common stock outstanding, Class A and Class B. The two classes of common stock are identical except that the Class B shares are nonvoting. The Class A shares are held entirely by certain members of the Family Group. In addition, the Family Group owns approximately a shares of the Class B stock. The Retirement Plan, which is an employees' trust described in section 401(a) that is exempt from tax under section 501(a), owns approximately b shares of the Class B stock. Individual employees of Company own the remaining approximately c shares of the Class B stock.

Prior to Date 1, in order to provide liquidity to the Retirement Plan and to help the Retirement Plan diversify its assets, Company's board of directors met to discuss a plan according to which Company would annually redeem an amount of shares of Class B common stock held by the Retirement Plan equal to \$d. At the meeting, the board of directors approved a financial forecast that included a dedicated line item for the planned redemptions. Absent further redemptions, the Retirement Plan will have sufficient liquidity to meet its obligations for only the next three to five years.

On Date 1, Company redeemed e shares of Class B common stock from the Retirement Plan in exchange for \$d cash, which reduced the Retirement Plan's ownership of Company's total shares of common stock outstanding from approximately f% to approximately g%. On or about Date 2, Company will redeem approximately h shares of Class B common stock from the Retirement Plan in exchange for \$d cash (collectively, the "Retirement Plan Redemptions"), which will reduce the Retirement Plan's ownership of Company's total shares of common stock outstanding from approximately g% to approximately i%. Barring unforeseen or unanticipated business circumstances regarding cash flow, Company plans additional annual redemptions in the amount of \$d through Fiscal Year A.

On or about Date 3, Company will redeem a maximum of j shares of Class B common stock from the Family Group in exchange for \$k cash (the "Family Group Redemption"). The Family Group Redemption is functionally unrelated to the Retirement Plan redemptions. Currently, there is no plan to offer any further redemptions to the Family Group.

## **REPRESENTATIONS**

### **Retirement Plan Redemptions**

Company makes the following representations with respect to the Retirement Plan Redemptions:

- (1a) There are no outstanding options or warrants to purchase Company stock, nor are there any outstanding debentures or other obligations that are convertible into Company stock or would be considered Company stock.
- (1b) No notes or other obligations of Company will be distributed to a redeemed shareholder.
- (1c) No shareholder of Company has been or will be obligated to purchase any of the stock to be redeemed.

- (1d) None of the stock to be redeemed is “section 306 stock” within the meaning of section 306(c).
- (1e) There are no declared but unpaid dividends, or funds set apart for dividends, on any of the stock to be redeemed.
- (1f) At the time of the exchange, the fair market value of the consideration to be received by the Retirement Plan will be approximately equal to the fair market value of Company’s stock to be exchanged therefor.
- (1g) The price to be paid for Company’s stock to be redeemed will not result in a loss with respect to those shares of stock.

#### Family Group Redemption

Company makes the following representations with respect to the Family Group Redemption:

- (2a) Company is not required by its charter, bylaws, or otherwise to redeem any of its stock, and the members of the Family Group have no right to require Company to make a tender offer or otherwise redeem any stock. The board of directors of Company has a fiduciary duty to Company and its shareholders to consider the appropriateness of any share repurchase and has not, in any manner, relinquished its discretion in carrying out its fiduciary duties.
- (2b) The Family Group Redemption is an isolated transaction and is not related to any other past or future transaction.
- (2c) The Family Group Redemption is motivated solely by Company’s business considerations and is not motivated by any intent on Company’s part to confer a federal income tax benefit on any shareholder.
- (2d) The Family Group Redemption is not part of a plan to periodically increase the proportionate share of any shareholder in the assets or earnings and profits of Company.
- (2e) At the present time, Company has no plan to make any further offers to redeem stock from the Family Group subsequent to the presently proposed Family Group Redemption. However, it is possible that Company will make additional offers in future years based on the circumstances prevailing at the time.

## **RULINGS**

### Retirement Plan Redemptions

Based solely on the on the information submitted and the representations set forth above, we rule as follows with respect to the Retirement Plan Redemptions:

- (1) The redemptions by Company of its Class B common stock held by the Retirement Plan, as described above, will qualify as redemptions that are not essentially equivalent to a dividend within the meaning of section 302(b)(1). The distributions in redemption of the stock owned by the Retirement Plan will be treated as distributions in full payment in exchange for stock owned by the Retirement Plan as provided in section 302(a). See *United States v. Davis*, 397 U.S. 301 (1970); Rev. Rul. 75-512, 1975-2 C.B. 112; Rev. Rul. 77-426, 1977-2 C.B. 87.

### Family Group Redemption

Based solely on the on the information submitted and the representations set forth above, we rule as follows with respect to the Family Group Redemption:

- (2) The Family Group Redemption will constitute a single and isolated transaction and will not result in a deemed distribution under section 305 with respect to any of Company's shareholders, regardless of whether such shareholder has a portion of its stock redeemed in the transaction. See Treas. Reg. § 1.305-3(e), Examples (10) and (11). See also Rev. Rul. 77-19, 1979-1 C.B. 84.

## **CAVEATS**

The above rulings are effective to the extent that the amount distributed to the Retirement Plan represents the fair market value of the Class B common stock redeemed from the Retirement Plan.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transactions that are not specifically covered by the above rulings. In particular, we express no opinion with respect to the income tax treatment of the Family Group Redemption to any member of the Family Group under sections 301 or 302 of the Code.

**PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Alison G. Burns  
Branch Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)

cc: